IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2006

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.M.P.NO.8998 OF 2006
IN
S.A.NO.545 OF 1993

1.P.Rathinasamy
2.Lingappan
3.T.Indirani
4.G.R.Sundaravadivelu
5.G.R.Ravikumar
6.K.Palanisamy
7.D.Jaganathan
8.S.T.Eshwaran
9.C.Sathya
10.S.Indirani
11.E.M.Ramasamy
12.N.Saraswathi
13.M.Poovathal .. Petitioners

Vs.

1.A.Maruthachalam.
2.G.M.Ayyasamy
3.Arukutti
4.Rangalakshmi Ammal
5.Seralathan
6.Elangovan
7.Parthiban
8.N.Palanisamy(died)
9.R.Saraswathi(died)
10.Thilagavathi .. Respondents

This petition is filed under Order 1 Rule 10(2) of C.P.C to permit the petitioners to be impleaded as the respondents 10 to 22 in S.A.No.545 of 1993 on the file of this Court.

For Petitioners : Mr.S.Subbiah

For Respondents : Mr.M.Sathya Narayanan

ORDER

This petition has been brought forth by the petitioners, seeking to add them as parties in S.A.No.545 of 1993 on the file of this Court.

2.It was a suit for partition, which was agitated till this Court between the father and the son in S.A.No.545 of 1993. Originally, there was a decree passed by this Court on the basis of the compromise entered into between the parties. Subsequently, there was an application filed for modification in the compromise decree passed on 22.7.2005. At that time, it was brought to the notice of the court that a sum of Rs.14,59,465/- is in the hands of the power holder of defendants 3 to 6 and 9 which has got to be deposited in Court to the credit of O.S.No.2152 of 1981 on the file of the I Additional District Munsif, Coimbatore and only when such a clause to that effect is added, the said sum could be deposited in court thereby enabling the parties to work out their remedies which was understood between them under the compromise decree. Accordingly, it was ordered.

3.This petition has been filed by the petitioners, who are 13 in number, but the affidavit has been filed by one of them. The learned counsel for the petitioners submits that all the petitioners purchased the property, namely different plots, from the original owner and under these circumstances, they have got to be heard and the compromise decree, which was entered into between the parties, was only a collusive one and if the petitioners are not added as parties, their interest would be defeated and hence, they should be added as parties. In support of his contentions, he relied on the following decisions of the Supreme Court and this Court:
i)2005 (ii) SCC 403 (AMIT KUMAR SHAW AND ANOTHER VS. FARIDA KHATOON AND ANOTHER)
ii)2006 (3) MLJ 258 (SC) (PUSHPA DEVI BHAGAT (DECEASED) THROUGH LR.SMT.SADHNA RAI VS. RAJINDER SINGH AND OTHERS) and
iii)2006(3) TLNJ 441 (JASWANT CHAND VS. G.V.FILMS LIMITED).

4.The court heard the learned counsel for the respondents on the above contentions.

5.After hearing the submissions made, the Court is of the considered opinion that this petition requires an order of dismissal. It was a suit for partition, which was agitated till this Court in S.A.No.545 of 1993 and a compromise decree has been passed and it was also recorded. At this juncture, after the proceedings were over long back, the instant petition has been brought forth. This petition has got to be dismissed on two grounds. Firstly, no proceedings is pending in this Court. It is a condition precedent for making the petition like this and allowing to add them as parties to the pending proceedings. Thus, no proceedings is pending in this Court and hence, the petition cannot be maintained. Secondly, paragraph 5 of the affidavit reads as follows:
"5.The petitioners herein are the alienees of portions of the suit properties, divided by the second respondent herein into several plots, and unknowing of the litigations taken out by the first respondent as against the second respondent, the same were purchased either by the petitioners or their predecessors in title, from whom some of the petitioners purchased the properties."
The averments made in the affidavit are so bald. Apart from that, on the basis of which, no question of making them as parties to the pending proceedings would arise. Under these circumstances, the petition deserves an order of dismissal. Accordingly, it is dismissed.

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